To: Mr. William Sessions
Re: Country of Origin Labeling Comments
USDA Listening Session, Lancaster, PA

The North American Perishable Agricultural Receivers (NAPAR) is pleased to submit these comments on behalf of our members regarding the U.S. Department of Agriculture's implementation of Country of Origin Labeling (COL) requirements under the Farm Security and Rural Investment Act of 2002, PL 107-171, ("the Act").

NAPAR is a national trade association located in Washington, DC, representing independent produce wholesale receivers. NAPAR members are predominantly small businesses with combined annual sales in excess of $4 billion. NAPAR formed an operating alliance with the Food Marketing Institute in 1999 enabling it to function independently while expanding the services to its members. NAPAR members greatly appreciate the opportunity to share our views with USDA on this important issue.

NAPAR members, as wholesale receivers, find themselves in the unique position of supplying retailers, while being supplied by someone else themselves. In this circumstance, under the Act, retailers will hold our members accountable for the accuracy of country of origin information on the covered product sold to them. Wholesale receivers, however, have to rely on the accuracy of the COL information they receive from their own suppliers. Retailers, in order to limit their own liability, will be requiring certain assurances from the wholesale receivers. These assurances will include USDA user-fee based audits, modified contracts to assure verifiable audit trails, verifiable segregation plans and indemnification for any incorrect information passed up the supply chain. The cost of which will be significant and the negative impact this process will have on small produce distributors will, while unintended, be enormous.

While the original legislation (public Law 107-171) calls for a mandatory country of origin labeling program, we would prefer that USDA follow a more lenient course than the voluntary program set out in 67 F.R. 63367-63375. We call on you to follow existing law where possible, that you issue regulations quickly and that you consider the real-life impact that these regulations will have on the small business distributors who will be so significantly affected.

Follow Existing Law Wherever Possible

We would like to reaffirm a comment made by the United Fresh Fruit & Vegetable Association on this subject: "We urge USDA to carefully study all existing laws, rules and regulations affecting "Covered Commodities" under the Act, so as to avoid adding new and unnecessary requirements in the distribution chain. Because perishable agricultural commodities are already regulated extensively under the Perishable Agricultural Commodities Act, fruits and vegetables subject to the Act should be addressed in such a way as to minimize duplicate requirements and potential conflict between PACA and new regulations. The law specifically defines as covered commodities those products subject to the PACA. As such, the Act contains clear reference to Congressional intent that regulations for country of origin labeling would necessarily complement PACA requirements, not compete with them."

In addition to PACA, the Tariff Act of 1930 requires consumer-ready products to be labeled with the country of origin of all ingredients in the package, without regard to the weight of its individual component varieties. We ask you to consider the Tariff Act of 1930 as a possible existing solution for country of origin declaration of blended fresh produce.

Issue Regulations Quickly

We urge you to publish a proposed final rule as quickly as possible. Because the industry must be in compliance by October 1, 2004, it is imperative that we receive as much advance notice as possible from USDA as to the final form of the regulations. In order to minimize the economic disruption that this regulation is sure to cause our members, we request that this information be issued no later than October 1, 2003.

Economic Risk to Receivers

Produce wholesale receivers are typically small businesses that are able to respond efficiently to the specific needs of a wide variety of customers including processors, foodservice operators and food retailers. In fact, produce wholesale receivers supply approximately 15 to 20 percent of a retail chain's produce needs. This is done in a variety of ways:

- Receivers often supply retailers with many of the specialty, promotional and slower-moving produce items offered in their retail stores.
- Receivers are sometimes called upon to quickly augment loads when the retailer had been shorted by another supplier.
- Retailers, for quality reasons, are sometimes forced to reject shipments from their original suppliers and call upon local receivers to supply replacement loads.

Receivers typically carry minimal inventories on hand of many produce varieties, but are still able to fulfill large orders from retailer or processor customers on short notice. They accomplish this by combining their own stock with similar product obtained from other receivers in their market. As a result, it's possible that portions of an order, while carrying the same PLU number, may have originated from different countries; or may have been (originally intended) for food service customers (and be exempt from COL requirements). This common practice efficiently enables retailers to maintain full and fresh produce departments. It also allows processors to complete their batch runs during times when they experience supply chain disruptions.

While this ability to scramble on short notice has long been the receivers' strength, it adds layers to the supply chain that may represent unacceptable risk to retailers in their attempt to comply with the proposed COL regulations.

While receivers fully intend to comply with the segregated storage, labeling, recordkeeping and product tracking requirements, they are concerned that retailers, in order to reduce their own liability, may decide that accepting produce through this channel is too risky. This may cause retailers to limit the number of suppliers with whom they would be willing to deal. Losing these retailer customers could mean the difference between a profitable and a devastating year for many small-business receivers.

Repacking:
Some wholesale receivers have arrangements with retail customers to provide produce items within specific size tolerances. Often, however, wholesalers receive shipments in which items are inconsistently sized within the same carton. This causes them to set up repacking operations on their own premises, whereby entire shipments of certain produce items, like Green Peppers, are dumped, sorted by size and repacked in order to meet customer's correct size specifications. U.S. Grade Standards don't often help in these instances because their size tolerances are too vague. Under the Act, these items would have to be segregated by country of origin in the wholesaler's storage facility and repacked on country-specific runs. This process, while necessary to maintain customer relations, will only serve to raise costs for the re-packer while adding little value for consumers.

Limitation of Retailer Liability:
Produce wholesale receivers are very concerned that retailers, in order to limit their own potential liability, will decide to limit the number of small-business suppliers with whom they deal. This will effectively reduce the number of small-business wholesale receivers in any given market. Those receivers who have the resources to:

- update their packaging and labeling systems;
- fully modify their electronic record keeping systems;
- dedicate additional floor space for segregated product storage in warehouses and on trucks; and
- pay for 3rd party user-fee based audits

will have a distinct advantage in establishing their ability to comply with the Act. These companies will become the approved suppliers for local retailers while other small-business distributors with fewer resources will no longer be able to compete. We feel certain that it was not the intent of Congress to place any small businesses in jeopardy as a result of the Act being implemented.

Summary:
As small-businesses wholesale receivers, NAPAR members are caught between the urgent needs of their retailer customers for accurate COL information and the reality that this information can only be obtained from their own suppliers. NAPAR members are very concerned about the unintended consequences that implementation of the Act will have on their ability to survive in the future. NAPAR would prefer a voluntary, non regulatory approach, but given that a mandatory program is required by statute, we implore USDA to consider the significant burdens its proposed regulations impose on wholesale receivers.

Sincerely,

Patrick A. Davis
President